

**U.S. District Court
Eastern District of California – Live System (Sacramento)
CIVIL DOCKET FOR CASE #: 2:08-cv-01252-WBS-EFB**

Nutrishare, Inc. v. BioRx, LLC
Assigned to: Judge William B. Shubb
Referred to: Magistrate Judge Edmund F. Brennan
Cause: 15:1114 Trademark Infringement

Date Filed: 06/04/2008
Date Terminated: 08/14/2008
Jury Demand: Plaintiff
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Plaintiff

Nutrishare, Inc.
a California corporation

represented by **Michael John Thomas**
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V.

Defendant

BioRx, LLC
an Ohio Limited Liability Company

represented by **Amy Wintersheimer Findley**
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Date Filed	#	Docket Text
06/04/2008	<u>1</u>	COMPLAINT against BioRx, LLC by Nutrishare, Inc.. Attorney Thomas, Michael John added. (Attachments: # <u>1</u> Exhibit A (Registration Certificate))(Thomas, Michael) (Entered: 06/04/2008)
06/05/2008	<u>1</u>	RECEIPT number #CAE200007548 \$350.00 fbo Nutrishare, Inc. by Michael John Thomas on 6/5/2008. (Mena-Sanchez, L) (Entered: 06/05/2008)
06/05/2008	<u>3</u>	SUMMONS ISSUED as to *BioRx, LLC* with answer to complaint due within *20* days. Attorney *Michael John Thomas* *Downey Brand LLP* *555 Capitol Mall, 10th Floor* *Sacramento, CA 95814*. (Mena-Sanchez, L) (Entered: 06/05/2008)
06/05/2008	<u>4</u>	TRADEMARK NEW CASE DOCUMENTS ISSUED as to Trademark #1:* 2,615,200 * * 9/3/02 * * Nutrishare * Initial Scheduling Conference set for 9/22/2008 at 02:00 PM in Courtroom 5 (WBS) before Judge William B. Shubb. (Attachments: # <u>1</u> Consent to Magistrate, # <u>2</u> Trademark) (Mena-Sanchez, L) (Entered: 06/05/2008)
06/05/2008	<u>5</u>	CIVIL COVER SHEET by Nutrishare, Inc. (Thomas, Michael) (Entered: 06/05/2008)
06/24/2008	<u>6</u>	MOTION for PRELIMINARY INJUNCTION by Nutrishare, Inc.. Motion Hearing set for 08/04/08 at 02:00 PM in Courtroom 5 (WBS) before Judge William B. Shubb. (Attachments: # <u>1</u> Memorandum of Points & Authorities)(Thomas, Michael) Modified on 7/16/2008 (Benson, A). (Entered: 06/24/2008)
06/24/2008	<u>7</u>	DECLARATION of Rodney Okamoto in Support of re <u>6</u> MOTION for PRELIMINARY INJUNCTION. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H)(Thomas, Michael) (Entered: 06/24/2008)
06/24/2008	<u>8</u>	DECLARATION of Michael J. Thomas in Support of re <u>6</u> MOTION for PRELIMINARY INJUNCTION. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Thomas, Michael) (Entered: 06/24/2008)
06/24/2008	<u>9</u>	DECLARATION of Anita Wallin in Support of re <u>6</u> MOTION for PRELIMINARY INJUNCTION. (Thomas, Michael) (Entered: 06/24/2008)
06/24/2008	<u>10</u>	[PROPOSED] ORDER Granting <u>6</u> MOTION for PRELIMINARY INJUNCTION. (Thomas, Michael) Modified on 6/25/2008 (Mena-Sanchez, L). (Entered: 06/24/2008)
06/24/2008	<u>11</u>	DECLARATION of Reid A. Nishikawa in Support of <u>6</u> MOTION for PRELIMINARY INJUNCTION. (Thomas, Michael) Modified on 6/25/2008 (Mena-Sanchez, L). (Entered: 06/24/2008)
06/26/2008	<u>12</u>	SUMMONS RETURNED EXECUTED by Nutrishare, Inc. Attorney Rajagopal-Durbin, Aparna added. BioRx, LLC served on 6/26/2008. (Rajagopal-Durbin, Aparna) Modified on 6/27/2008 (Engbretson, K.). (Entered: 06/26/2008)
06/26/2008	<u>13</u>	CERTIFICATE of SERVICE by Nutrishare, Inc. re <u>6</u> , <u>7</u> , <u>8</u> , <u>9</u> , <u>10</u> , <u>11</u> . (Rajagopal-Durbin, Aparna) Modified on 6/27/2008 (Engbretson, K.). (Entered: 06/26/2008)
06/26/2008	<u>14</u>	CERTIFICATE of SERVICE by Nutrishare, Inc. re <u>1</u> , <u>3</u> , <u>4</u> , <u>6</u> , <u>7</u> , <u>8</u> , <u>9</u> , <u>10</u> , [11]. (Rajagopal-Durbin, Aparna) Modified on 6/27/2008 (Engbretson, K.). (Entered: 06/26/2008)
07/07/2008	<u>15</u>	CONSENT to JURISDICTION by US MAGISTRATE JUDGE by Nutrishare, Inc..

		(Rajagopal–Durbin, Aparna) (Entered: 07/07/2008)
07/07/2008	<u>16</u>	NOTICE of Errata by Nutrishare, Inc. re <u>15</u> Consent to Jurisdiction by US Magistrate Judge. (Rajagopal–Durbin, Aparna) (Entered: 07/07/2008)
07/07/2008	<u>17</u>	DECLINE to PROCEED BEFORE US MAGISTRATE JUDGE by Nutrishare, Inc.. (Rajagopal–Durbin, Aparna) (Entered: 07/07/2008)
07/08/2008	<u>18</u>	REQUEST for <i>Plaintiff's to File Newly Discovered Evidence In Support of Motion for Preliminary Injunction</i> by Nutrishare, Inc. re <u>6</u> MOTION for PRELIMINARY INJUNCTION filed by Nutrishare, Inc.. (Attachments: # <u>1</u> Declaration of Kerry Stone Regarding Actual Confusion, # <u>2</u> Declaration of Rodney Okamoto In Support of Motion for Preliminary Injunction, # <u>3</u> Exhibit A to Supplemental Declaration of Rodney Okamoto, # <u>4</u> Proposed Order Granting Request to File Newly Discovered Evidence in Support of Motion for Preliminary Injunction, # <u>5</u> Certificate of Service)(Thomas, Michael) (Entered: 07/08/2008)
07/14/2008	<u>19</u>	ORDER signed by Judge William B. Shubb on 7/9/08 ORDERING that having considered Plaintiffs Request to File Newly Discovered Evidence in support of Motion for Preliminary Injunction, and finding good cause therefore, hereby grants Plaintiffs request. The Court accepts for filing the Declaration of Kerry Stone Regarding Actual Confusion and the Supplemental Declaration of Rodney Okamoto, and will consider this evidence as if it had been submitted with Plaintiffs Motion for Preliminary Injunction, filed on June 24, 2008. (Carlos, K) (Entered: 07/14/2008)
07/15/2008	<u>20</u>	SUPPLEMENTAL DECLARATION of Rodney Okamoto in support of <u>6</u> Motion for Preliminary Injunction (Attachments: # <u>1</u> Exhibit A)(Thomas, Michael) Modified on 7/16/2008 (Benson, A). (Entered: 07/15/2008)
07/15/2008	<u>21</u>	DECLARATION of Kerry Stone in support of <u>6</u> Motion for Preliminary Injunction. (Thomas, Michael) Modified on 7/16/2008 (Benson, A). (Entered: 07/15/2008)
07/15/2008	<u>22</u>	CERTIFICATE of SERVICE by Nutrishare, Inc. of <u>20</u> Declaration of Rodney Okamoto and <u>21</u> Declaration of Kerry Stone (Thomas, Michael) Modified on 7/15/2008 (Kastilahn, A). (Entered: 07/15/2008)
07/15/2008	<u>23</u>	EX PARTE APPLICATION by BioRx for Continuance of Hearing Date on <u>6</u> Plaintiff's Motion for Preliminary Injunction. Attorney Wilson, Charlene J. added. (Wilson, Charlene) Modified on 7/16/2008 (Benson, A). (Entered: 07/15/2008)
07/15/2008	<u>24</u>	DECLARATION of Charlene J. Wilson in Support of re <u>23</u> Ex Parte Application. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Wilson, Charlene) (Entered: 07/15/2008)
07/15/2008	<u>25</u>	PROPOSED ORDER Granting re <u>23</u> Ex Parte Application by BioRx, LLC. (Wilson, Charlene) (Entered: 07/15/2008)
07/15/2008	<u>26</u>	CERTIFICATE of SERVICE by BioRx, LLC re <u>23</u> Ex Parte Application, <u>25</u> Proposed Order, <u>24</u> Declaration. (Wilson, Charlene) (Entered: 07/15/2008)
07/16/2008	<u>27</u>	MOTION to DISMISS or to TRANSFER VENUE (Motion Hearing set for 8/18/2008 at 02:00 PM in Courtroom 5 (WBS) before Judge William B. Shubb.) by BioRx, LLC. Attorney Findley, Amy Wintersheimer added. (Attachments: # <u>1</u> Points and Authorities, # <u>2</u> Declaration of Phillip C. Rielly)(Findley, Amy) Modified on 7/29/2008 (Yin, K). (Entered: 07/16/2008)
07/17/2008	<u>28</u>	MINUTE ORDER: The Court sets a Telephone Status Conference for 7/17/2008 at 03:45 PM in Courtroom 5 (WBS) before Judge William B. Shubb re <u>23</u> Defendant's Ex Parte Application to Continue Plaintiff's Motion for Preliminary Injunction. The Court shall initiate the telephone conference call. (Kirksey Smith, K) (Entered: 07/17/2008)

07/17/2008	<u>29</u>	MINUTES (Text Only) for proceedings held before Judge William B. Shubb: TELEPHONE STATUS CONFERENCE held on 7/17/2008 re <u>23</u> Defendant's Ex Parte Application to Continue Plaintiff's Motion for Preliminary Injunction. Court confers with counsel and orders the following: 1) <u>27</u> Defendant's MOTION to DISMISS for LACK of JURISDICTION or to Transfer Venue is reset for 8/11/2008 at 02:00 PM in Courtroom 5 (WBS) before Judge William B. Shubb; Plaintiff's opposition shall be filed no later than 7/28/2008; Defendant's reply shall be filed no later than 8/4/2008; 2) <u>6</u> Plaintiff's Motion for Preliminary Injunction is reset for 8/18/2008 at 02:00 PM in Courtroom 5 (WBS) before Judge William B. Shubb; Defendant's opposition shall be filed no later than 8/4/2008; Plaintiff's reply shall be filed no later than 8/12/2008 by 12:00 PM (Noon). Defendant's Ex Parte Application is dropped. Plaintiffs Counsel Michael Thomas, Aparna Rajagopal–Durbin present. Defendants Counsel Charlene Wilson present. Court Reporter: Not Present. (Kirksey Smith, K) (Entered: 07/17/2008)
07/28/2008	<u>30</u>	RESPONSE in OPPOSITION to <u>27</u> Motion to Dismiss or Transfer Venue. (Thomas, Michael) Modified on 7/29/2008 (Yin, K). (Entered: 07/28/2008)
07/28/2008	<u>31</u>	DECLARATION of Rodney Okamoto in OPPOSITION TO re <u>27</u> MOTION to DISMISS for LACK of JURISDICTION MOTION to Transfer Venue. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G)(Thomas, Michael) (Entered: 07/28/2008)
07/28/2008	<u>32</u>	DECLARATION of Aparna Rajagopal–Durbin in OPPOSITION TO re <u>27</u> MOTION to DISMISS for LACK of JURISDICTION MOTION to Transfer Venue. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E)(Thomas, Michael) (Entered: 07/28/2008)
07/28/2008	<u>33</u>	DECLARATION of Kathryn Bundy in OPPOSITION TO re <u>27</u> MOTION to DISMISS for LACK of JURISDICTION MOTION to Transfer Venue. (Attachments: # <u>1</u> Exhibit A)(Thomas, Michael) (Entered: 07/28/2008)
07/28/2008	<u>34</u>	DECLARATION of Sheila Messina in OPPOSITION TO re <u>27</u> MOTION to DISMISS for LACK of JURISDICTION MOTION to Transfer Venue. (Thomas, Michael) (Entered: 07/28/2008)
07/30/2008	<u>35</u>	CERTIFICATE of SERVICE by Nutrishare, Inc. re <u>31</u> , <u>32</u> , <u>33</u> , <u>30</u> Memorandum/Response in Opposition to Motion, <u>34</u> . (Thomas, Michael) (Entered: 07/30/2008)
07/31/2008	<u>36</u>	CERTIFICATE of SERVICE by Nutrishare, Inc. re <u>4</u> Trademark New Case Documents for WBS, <u>3</u> Summons, <u>1</u> Complaint. <i>On BioRx, LLC's Sacramento Agent For Service Of Process</i> (Thomas, Michael) (Entered: 07/31/2008)
08/04/2008	<u>37</u>	REPLY by BioRx, LLC to RESPONSE to <u>27</u> Motion to Dismiss Motion to Transfer Venue. (Attachments: # <u>1</u> Declaration of Amy Wintersheimer Findley, # <u>2</u> Declaration of Douglas Eric Hill, # <u>3</u> Exhibit A to Douglas Eric Hill Declaration, # <u>4</u> Declaration of Deborah Pfister, # <u>5</u> Exhibit A to Deborah Pfister Declaration, # <u>6</u> Exhibit B to Deborah Pfister Declaration, # <u>7</u> Exhibit C to Deborah Pfister Declaration)(Findley, Amy) (Entered: 08/04/2008)
08/04/2008	<u>38</u>	OBJECTIONS by Defendant BioRx, LLC to <u>31</u> , <u>32</u> , <u>33</u> , <u>34</u> . <i>to Evidence Submitted by Plaintiff in Support of its Opposition to Defendant's Motion to Dismiss or Transfer Venue</i> (Findley, Amy) (Entered: 08/04/2008)
08/04/2008	<u>39</u>	DECLARATION of Kathryn Bundy in Support Of re <u>30</u> Opposition to Motion. <i>With Exhibit A</i> (Thomas, Michael) (Entered: 08/04/2008)
08/04/2008	<u>40</u>	DECLARATION of Rodney Okamoto in Support Of re <u>30</u> Opposition to Motion. (Attachments: # <u>1</u> Exhibit A–D, # <u>2</u> Exhibit E–G)(Thomas, Michael) (Entered: 08/04/2008)

08/04/2008	<u>41</u>	OPPOSITION by BioRx, LLC to <u>6</u> Motion for Preliminary Injunction. (Attachments: # <u>1</u> Declaration of Timothy Fensky, # <u>2</u> Declaration of Deborah Pfister, # <u>3</u> Exhibit A to Deborah Pfister Declaration, # <u>4</u> Exhibit B to Deborah Pfister Declaration, # <u>5</u> Exhibit C to Deborah Pfister Declaration, # <u>6</u> Declaration of Steven C. Coffaro, # <u>7</u> Exhibit A to Steven C. Coffaro Declaration, # <u>8</u> Exhibit B to Steven C. Coffaro Declaration)(Findley, Amy) Modified on 8/5/2008 (Dillon, M). (Entered: 08/04/2008)
08/04/2008	<u>42</u>	DECLARATION of Aparna Rajagopal Durbin in Support Of re <u>30</u> Opposition to Motion. <i>With Exhibits A–E</i> (Thomas, Michael) (Entered: 08/04/2008)
08/04/2008	<u>43</u>	OBJECTIONS by Defendant BioRx, LLC to <u>7</u> , <u>9</u> , <u>11</u> , <u>20</u> . <i>to Evidence Submitted by Plaintiff in Support of Motion for Preliminary Injunction</i> (Findley, Amy) (Entered: 08/04/2008)
08/04/2008	<u>44</u>	CERTIFICATE of SERVICE by BioRx, LLC re <u>37</u> Reply to Response to Motion, <u>38</u> Objections. (Findley, Amy) (Entered: 08/04/2008)
08/04/2008	<u>45</u>	CERTIFICATE of SERVICE by BioRx, LLC re <u>43</u> Objections, <u>41</u> Opposition to Motion, <i>for Preliminary Injunction</i> (Findley, Amy) (Entered: 08/04/2008)
08/08/2008	<u>46</u>	STIPULATION re <u>27</u> Motion to Dismiss Motion to Transfer Venue <i>Permitting Plaintiff to Submit Supplemental Documents</i> by Nutrishare, Inc.. (Thomas, Michael) (Entered: 08/08/2008)
08/08/2008	<u>47</u>	RESPONSE to Defendant's Objections to Evidence <u>43</u> Submitted by Plaintiff In Support of Opposition to Defendant's Motion to Dismiss or Transfer Venue by Nutrishare, Inc. (Thomas, Michael) Modified on 8/11/2008 (Carlos, K). (Entered: 08/08/2008)
08/08/2008	<u>48</u>	STIPULATION regarding submission of new evidence in Opposition to Motion by BioRx, LLC. (Findley, Amy) Modified on 8/11/2008 (Carlos, K). (Entered: 08/08/2008)
08/08/2008	<u>49</u>	DECLARATION of Aparna Rajagopal–Durbin in support of opposition to dft's motion to dismiss or transfer. (Attachments: # <u>1</u> Exhibit A)(Thomas, Michael) Modified on 8/11/2008 (Carlos, K). (Entered: 08/08/2008)
08/08/2008	<u>50</u>	DECLARATION of Douglas Eric Hill in support of dft's opposition to motion for preliminary injunction <u>41</u> . (Attachments: # <u>1</u> Exhibit A to Declaration of Douglas Eric Hill, # <u>2</u> Exhibit B to Declaration of Douglas Eric Hill)(Findley, Amy) Modified on 8/11/2008 (Carlos, K). (Entered: 08/08/2008)
08/08/2008	<u>51</u>	NOTICE of Errata by BioRx, LLC to <u>41</u> Opposition to Motion for preliminary injunction. (Attachments: # <u>1</u> Certificate of Service)(Findley, Amy) Modified on 8/11/2008 (Carlos, K). (Entered: 08/08/2008)
08/08/2008	<u>52</u>	CERTIFICATE of SERVICE by Nutrishare, Inc. re <u>49</u> Declaration, <u>47</u> Reply/Response, <u>46</u> Stipulation. (Thomas, Michael) (Entered: 08/08/2008)
08/08/2008	<u>53</u>	STIPULATION re <u>41</u> Opposition to Motion, <i>for Preliminary Injunction (Regarding Submission of New Evidence in Opposition)</i> CORRECTED by BioRx, LLC. (Findley, Amy) (Entered: 08/08/2008)
08/08/2008	<u>54</u>	CERTIFICATE of SERVICE by BioRx, LLC re <u>50</u> Declaration, <u>53</u> Stipulation. (Findley, Amy) (Entered: 08/08/2008)
08/08/2008	<u>55</u>	PROPOSED ORDER Permitting Plaintiff to Submit Supplemental Documents Re: Defendant's Motion to Dismiss or Transfer Venue re <u>46</u> Stipulation by Nutrishare, Inc.. (Thomas, Michael) (Entered: 08/08/2008)
08/11/2008	<u>56</u>	STIPULATION AND ORDER signed by Judge William B. Shubb on 8/8/8 ORDERING the submission of new evidence in opposition to motion for preliminary injunction <u>6</u> GRANTED.

		(Carlos, K) (Entered: 08/11/2008)
08/11/2008	<u>57</u>	MINUTES (Text Only) for proceedings held before Judge William B. Shubb: MOTION HEARING held on 8/11/2008. Cour takes <u>27</u> Defendant's Motion to Dismiss or Transfer Venue UNDER SUBMISSION. Plaintiffs Counsel Michael Thomas, Aparna Durbin present. Defendants Counsel Charlene Wilson present. Court Reporter: Kathy Swinhart. (Kirksey Smith, K) (Entered: 08/11/2008)
08/12/2008	<u>58</u>	ORDER signed by Judge William B. Shubb on 8/11/08 ORDERING that pltf has leave to submit 11/7/07 letter from Mark Kestler R. Ph. and pltf's responses to dft's objections to evidence submitted by pltf ISO Opposition to dft's <u>27</u> Motion to Dismiss or Transfer Venue. (Yin, K) (Entered: 08/12/2008)
08/12/2008	<u>59</u>	REPLY/RESPONSE to <u>38</u> Defendants Objections To Evidence Submitted By Plaintiff ISO Motion For Preliminary Injunction by Nutrishare, Inc. (Thomas, Michael) Modified on 8/14/2008 (Dillon, M). (Entered: 08/12/2008)
08/12/2008	<u>60</u>	REPLY by Nutrishare, Inc. to RESPONSE to <u>6</u> Motion for Preliminary Motion. (Attachments: # <u>1</u> Declaration Rodney Okamoto, # <u>2</u> Declaration Ellen J. Tenud with Exhibits A–C, # <u>3</u> Exhibit – Unpublished Case)(Thomas, Michael) (Entered: 08/12/2008)
08/12/2008	<u>61</u>	NOTICE of Errata Re: <i>Corrected Table of Authorities for Nutrishare, Inc.'s Reply (with Exhibit A)</i> by Nutrishare, Inc. re <u>60</u> Reply to Response to Motion. (Rajagopal–Durbin, Aparna) (Entered: 08/12/2008)
08/13/2008	<u>62</u>	OBJECTIONS by Defendant BioRx, LLC to <u>60</u> Reply to Response to Motion. <i>for Preliminary Injunction</i> (Findley, Amy) (Entered: 08/13/2008)
08/14/2008	<u>63</u>	ORDER signed by Judge William B. Shubb on 08/14/08 ORDERING that dft's <u>27</u> Motion to Dismiss plfs Complaint for lack of personal jurisdiction be, and the same hereby is DENIED; dfs Motion to Transfer based on impropervenue be, and the same hereby is, GRANTED. This case is hereby ordered TRANSFERRED to the United States District Court for the Southern District of California for all further proceedings. Case sent electronically to the Southern District of CA. CASE CLOSED. (Benson, A) (Entered: 08/14/2008)